

APPEAL NO. 022251
FILED OCTOBER 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 19, 2002. The hearing officer determined that the respondent/cross-appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter and that the appellant/cross-respondent (self-insured) is not relieved of liability for SIBs because the claimant timely filed an Application for [SIBs] (TWCC-52) for the third quarter. The self-insured appeals numerous findings and conclusions of the hearing officer, asserting that there is an ongoing dispute of the impairment rating (IR) in district court, and apparently trying to preserve all of its objections. The claimant appeals the determination that she is not entitled to SIBs for the third quarter and responds to the self-insured's appeal. There is no response to the claimant's appeal from the self-insured.

DECISION

Affirmed in part; reversed and rendered in part.

APPEAL BASED ON LACK OF FINALITY OF IR

To the extent that the self-insured is basing its appeal on the fact that it is contesting the IR in district court, the appeal is without merit. Section 410.205(a) provides that "the decision of the appeals panel regarding benefits is binding during the pendency of an appeal under Subchapter F or G." See *also* Texas Worker's Compensation Commission Appeal No. 960368, decided April 8, 1996, and Texas Worker's Compensation Commission Appeal No. 960941, decided May 22, 1996.

TIMELY FILING

The hearing officer did not err in determining that the self-insured is not relieved of liability for SIBs because of the claimant's failure to timely file a TWCC-52. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.105(a)(1) (Rule 130.105(a)(1)) provides that an injured employee who does not timely file a TWCC-52 shall not receive SIBs for the period of time between the beginning date of the quarter and the date on which the form was received by the carrier, unless the carrier fails to timely mail the TWCC-52 as provided by Rule 130.104. The parties stipulated that the third quarter began on March 19, 2002. The claimant testified that she mailed the TWCC-52 on March 12, 2002, prior to the beginning date of the third quarter, and offered a signed "green card" as proof. There is sufficient evidence to support the hearing officer's determination that the claimant timely filed the TWCC-52. Accordingly, we affirm the hearing officer's determination that the carrier is not relieved of liability for the third quarter based upon untimely filing of the TWCC-52.

THIRD QUARTER SIBs

The hearing officer determined that the claimant was not entitled to third quarter SIBs because the claimant's unemployment during the third quarter was not a direct result of the impairment from the compensable injury and because the claimant did not make a good faith effort to obtain employment commensurate with her ability to work. The claimant appeals those determinations.

A. Direct Result

With regard to the hearing officer's determination that the claimant's impairment is not a direct result of her unemployment, there is no evidence set out in the hearing officer's decision on the matter, there is no discussion of that issue, there are no findings of fact leading to the conclusory finding that a direct result had not been proven, there is nothing to indicate as to what factors the standard was applied, and there was no focus on that particular issue at the hearing. As we review the record, the evidence supports a compensable injury, and continuing permanent impairment with an IR of 42% because of the compensable injury. On the other hand, there is no evidence of other possible causes of the claimant's unemployment overshadowing the impairment as a direct result. See Texas Worker's Compensation Commission Appeal No. 962653, decided February 13, 1997. Where, as here, there is a compensable injury resulting in a permanent impairment far in excess of 15% with medically documented, ongoing effects restricting working capacity, and the absence of any factors or circumstances that support the absence of "a direct result of the impairment," the hearing officer's determination of no direct result is not supported by the evidence of record and is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 961776, decided October 23, 1996. Accordingly, we reverse the finding that the claimant failed to meet her burden to prove that her unemployment during the qualifying period for the third compensable quarter was a direct result of her impairment and we render a new finding that the claimant's unemployment was a direct result of her impairment.

B. Good Faith Effort

As the hearing officer noted, the claimant did not document a job search in each week of the qualifying period. Thus, in accordance with the express language of Rule 130.102(e), her job search cannot rise to the level of a good faith search. The claimant admits that she did not document a job search for each week of the qualifying period but contends she should be excused from documenting a job search each week. She asserts that, because the adjuster did not timely send her the TWCC-52 for the third quarter, she did not have the correct dates that she was required to look for work. However, the claimant admitted that she had reviewed the instructions on the first TWCC-52 that she received where it states, "If you are not working, you must in good faith look for a job that matches your ability to work in every week of the qualifying quarter." (Emphasis in original). A delay in receiving the TWCC-52 would not preclude

the claimant from conducting a job search, and it was apparent that she had a form in time to timely file for third quarter SIBs. This was the claimant's third SIBs quarter, not her first experience with these benefits. In addition, the hearing officer specifically noted that the claimant "was neither credible nor persuasive." Under the circumstances, the evidence sufficiently supports the hearing officer's determination that the claimant did not make a good faith effort to obtain employment, and we therefore affirm the determination that the claimant is not entitled to SIBs for the third quarter. Cain, *supra*.

As specified above, we affirm the decision and order of the hearing officer as it pertains to timely filing the TWCC-52 and nonentitlement to SIBs for the third quarter and reverse and render the decision and order as it pertains to direct result.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Michael B. McShane
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Margaret L. Turner
Appeals Judge